

**Introduced by Senator Escutia**February 22, 2006

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An act to amend Section 5028 of the Penal Code, relating to prisoners.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1444, as introduced, Escutia. Prisoners: foreign nationals.

Existing law requires the Department of Corrections and Rehabilitation to notify all foreign national inmates that they can apply to serve the remainder of their term of imprisonment in his or her nation of citizenship.

This bill would require the Department of Corrections and Rehabilitation to deliver a foreign national to the United States Immigration and Nationalization Service if his or her country of nationality is a party to the Council of Europe Convention on the Transfer of Sentenced Persons or the Inter-American Convention on Serving Criminal Sentences Abroad and the foreign national is subject to transfer under the applicable convention. This bill would exclude from the required delivery provisions inmates imprisoned for murder and inmates who entered the United States prior to his or her 13th birthday.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 5028 of the Penal Code is amended to
- 2 read:
- 3 5028. (a) ~~Upon the entry of any~~ (1) Any person sentenced to
- 4 serve time in a facility operated by the department who is

1 ~~currently or was previously a foreign national into a facility~~  
2 ~~operated by the Department of Corrections, the Director of~~  
3 ~~Corrections shall inform the person that he or she may apply to~~  
4 ~~be transferred to serve the remainder of his or her prison term in~~  
5 ~~his or her current or former nation of citizenship. The director~~  
6 ~~shall inform the person that he or she may contact his or her~~  
7 ~~consulate and shall ensure that if notification is requested by the~~  
8 ~~inmate, that the inmate's nearest consulate or embassy is notified~~  
9 ~~without delay of his or her incarceration of a country that is a~~  
10 ~~party to the Council of Europe Convention on the Transfer of~~  
11 ~~Sentenced Persons or the Inter-American Convention on Serving~~  
12 ~~Criminal Sentences Abroad, shall be delivered by the department~~  
13 ~~to the United States Immigration and Naturalization Service in~~  
14 ~~order to facilitate the transfer of the person to his or her country~~  
15 ~~of nationality if the person is subject to transfer under the~~  
16 ~~applicable Convention. The transfer shall not occur until either~~  
17 ~~90 days after the final determination of any appeal by the person~~  
18 ~~or, for all persons who are sentenced after the effective date of~~  
19 ~~this section, within one year after the judgment becomes final,~~  
20 ~~whichever is later.~~

21 ~~(b) Upon the request of a foreign consulate representing a~~  
22 ~~nation that requires mandatory notification under Article 36 of~~  
23 ~~the Vienna Convention on Consular Relations Treaty listed in~~  
24 ~~subdivision (d) of Section 834e, the Department of Corrections~~  
25 ~~shall provide the foreign consulate with a list of the names and~~  
26 ~~locations of all inmates in its custody that have self-identified~~  
27 ~~that nation as his or her place of birth.~~

28 ~~(c) The Department of Corrections shall implement and~~  
29 ~~maintain procedures to process applications for the transfer of~~  
30 ~~prisoners to their current or former nations of citizenship under~~  
31 ~~subdivision (a) and shall forward all applications to the Governor~~  
32 ~~or his or her designee for appropriate action.~~

33 (2) (A) Any person who is returned to his or her country of  
34 origin pursuant to paragraph (1) while serving his or her court  
35 ordered sentence shall be placed on parole for the term to which  
36 the person had been sentenced to serve. As a condition of parole,  
37 the person shall be ordered not to return to the State of  
38 California. A return to the State of California during the term of  
39 parole shall be deemed a violation of parole, except as provided  
40 in subparagraph (B).

1     (B) Any person who is returned to his or her country of origin  
2     pursuant to paragraph (1) may return to the State of California  
3     for compassionate reasons as approved by the department  
4     without being in violation of his or her parole. Compassionate  
5     reasons shall include, but not be limited to, seeking medical  
6     attention, assisting another person in seeking medical attention,  
7     and attending a funeral.

8     (3) Paragraph (1) shall not apply to any of the following:

9     (A) Any person who is sentenced to serve time in a facility  
10    operated by the department for a violation of Section 187.

11    (B) Any person who entered the United States prior to his or  
12    her 13th birthday.

13    (b) (1) Any person sentenced to serve time in a facility  
14    operated by the department who is currently, or was previously,  
15    a foreign national of a country that is not a party to the Council  
16    of Europe Convention on the Transfer of Sentenced Persons or  
17    the Inter-American Convention on Serving Criminal Sentences  
18    Abroad, shall be informed by the secretary that he or she may  
19    apply to be transferred to serve the remainder of his or her  
20    prison term in his or her current or former nation of citizenship.  
21    The secretary shall inform the person that he or she may contact  
22    his or her consulate and shall ensure that if notification is  
23    requested by the inmate, that the inmate's nearest consulate or  
24    embassy is notified without delay of his or her incarceration.

25    (2) The department shall implement and maintain procedures  
26    to process applications for the transfer of prisoners to their  
27    current or former nations of citizenship under paragraph (1) and  
28    shall forward all applications to the Governor or his or her  
29    designee for appropriate action.

30    (c) When a court sentences a defendant who is a foreign  
31    national, the court shall make a determination of the defendant's  
32    country of nationality and the defendant's date of entry into the  
33    United States. An inmate already incarcerated on the effective  
34    date of this subdivision shall be granted, upon request, a hearing  
35    to determine the inmate's country of nationality and his or her  
36    date of entry into the United States.

37    (d) Upon the request of a foreign consulate representing a  
38    nation that requires mandatory notification under Article 36 of  
39    the Vienna Convention on Consular Relations Treaty listed in  
40    subdivision (d) of Section 834c, the department shall provide the

- 1 *foreign consulate with a list of the names and locations of all*
- 2 *inmates in its custody that have identified that nation as his or*
- 3 *her nation as his or her place of birth.*
- 4 *(e) The Attorney General shall notify the department upon*
- 5 *completion of any inmate's appeals.*